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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Tapperson et al.	I hereby certify that this paper is being deposited with the United States Postal Service, first class postage prepaid, addressed to: Commissioner for Patents P.O. Box 1450, Alexandria, Virginia 22313-1450, on the date indicated: May 3, 2004.
Serial No.: 09/805,124	
Title: An Apparatus For Providing Redundant Wireless Access To Field Devices In A Distributed Control System	
Filed: March 8, 2001	
Group Art Unit: 2141	
Examiner: Le H. Luu	Roger A. Heppermann Registration No. 37,641 Attorney for Applicants
Atty. Docket Number: 06005/34696A	

RESPONSE TO OFFICE ACTION DATED APRIL 1, 2004

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

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Dear Sir:

In response to the election of species requirement raised in the Office action dated April 1, 2004, applicants hereby elect, with traverse, the species corresponding to identified species group 1 for further prosecution in this application. Applicants respectfully submit that claims 1-8, 16-23, and 31-36 read on the elected species.

Applicants respectfully submit that the Examiner has not made a *prima facie* showing that each of the species groups identified in the Office action relate to a patentably distinct species. According to MPEP 803, "Examiners must provide reasons and/or examples to support conclusions, ... For purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP 808.02. ... Insofar as the criteria for restriction or election practice relating to claims to genus-species, see MPEP 806.04(a) - 806.04(i) and 808.01(a)." Contrary to the requirements above, the Examiner has not provided reasoning or examples for the conclusion

that each of the identified species groups is in fact a different species or shown that there would be a serious burden on the Examiner without the species election.

Contrary to the requirements of MPEP 803, the Examiner has not provided reasons or examples for concluding that patentably distinct species exist within the application. In particular, the Examiner has not demonstrated or explained how each of the species groups 1-8 requires a separate classification, separate status in the art, or a different field of search, as required by MPEP 803. Instead, the Examiner merely asserts that the application contains claims directed to patentably distinct species without definitively demonstrating that these patentably distinct species exist. A mere assertion that the claims are directed to patentably distinct species does not, in and of itself, establish a *prima facie* case that such species exist.

Furthermore, the Examiner has merely defined the identified species according to claim limitations, and not in accordance with any other identifiable criteria. However, according to MPEP 806.04(e), "[c]laims are definitions of inventions. *Claims are never species*." (Emphasis in original). Thus, species groups should not be defined according to the claims. Nonetheless, the Examiner has defined each species by pointing to limitations of different claims without providing any other criteria mandating the species election. Because the Examiner has merely defined the species according to the claims, the Examiner has not met the criteria of MPEP 806.04(e) and MPEP 803.

For these reasons, applicants respectfully submit that the requirements for election of species are not met, and that the election should be withdrawn. As a result, applicants respectfully request that each of claims 1-43 presently pending in this application be examined. Should the Examiner have any questions, the Examiner is respectfully invited to telephone the undersigned.

This response is being filed with a Power of Attorney signed by the Assingee, revoking all previous powers of attorney and appointing the below named attoneys in this case. Furthermore, this response is timely filed as it is filed with a certificate of mailing under 37 CFR 1.8 (a)(1) on the Monday following the one-month date of May 1, 2004, which fell on a Saturday. See, 37 CFR 1.7. Although Applicants believe that no other fees are due, the Commissioner is hereby authorized to charge any fees or to credit any overpayments to Deposit Account No. 13-2855 of Marshall, Gerstein & Borun LLP. In addition, if a petition for an extension of time under 37 CFR 1.136(a) is necessary to maintain the pendancy of this

case and is not otherwise requested in this case, Applicants request that the Commissioner consider this paper to be a request for an appropriate extension of time and hereby authorize the Commissioner to charge the fee as set forth in 37 CFR 1.17(a) corresponding to the needed extension of time to Deposit Account No. 13-2855 of Marshall, Gerstein & Borun LLP. A copy of this paper included herewith.

Respectfully submitted,

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May 3, 2004